Supreme Court, U. S.
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# In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1951

LOCAL FINANCE CORPORATION,
PETITIONER,

*v.*

COMMONWEALTH OF MASSACHUSETTS,
RESPONDENT.

## PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MASSACHUSETTS

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# In the Supreme Court of the United States

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No.

LOCAL FINANCE CORPORATION,
PETITIONER,

*v.*

COMMONWEALTH OF MASSACHUSETTS,
RESPONDENT.

## PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MASSACHUSETTS

The Petitioner Local Finance Corporation ("Local") prays that a writ of certiorari issue to review the opinion and judgment of the Supreme Judicial Court of Massachusetts entered in this proceeding on November 4, 1971.

### Opinion Below

The opinion of the Supreme Judicial Court, printed at page A-1 of the separately bound Appendix,[1] is reported at Massachusetts Advance Sheets (1971) 1367, and 275 N.E.2nd 33.

[1] The separately bound Appendix to this Petition is cited as "App."

## Jurisdiction

The opinion and judgment of the Supreme Judicial Court of Massachusetts were entered on November 4, 1971. On January 13, 1972, Mr. Justice Brennan granted an extension of time for filing this petition up to and including April 2, 1972. This Court's jurisdiction is invoked under 28 U.S.C. § 1257 (3).

## Questions Presented

Was the right of the petitioner to a fair trial, as guaranteed by the Sixth and Fourteenth Amendments, violated in a mass conspiracy trial:

(1) where the imposition of hundreds of evidentiary restrictions and extensions during eleven months of trial made it impossible for the jurors to separate the evidence admitted against each defendant;

(2) where Local was put to trial together with thirteen co-defendants, ten of whom had been tried, and eight convicted, in a prior mass conspiracy trial involving crimes which the Commonwealth insists had no connection whatever with the alleged conspiracy in the case at bar;

(3) where the trial of the indictment against the petitioner was joined with that of nineteen indictments, totalling fifty-five counts, against a defendant who was not named as a co-defendant or co-conspirator, particularly where such other defendant appeared *pro se;* and

(4) where a considerable portion of the evidence was introduced against the petitioner's co-defendants, but not against the petitioner, including (a) an extrajudicial statement made by a co-defendant which was powerfully inculpatory as to the petitioner, and (b) a handwritten list of the participants in a conspiracy, prepared out of court, containing the petitioner's name?

## Constitutional Provisions Involved

The Sixth Amendment to the United States Constitution provides in pertinent part:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury, * * * to be confronted with the witnesses against him; * * * and to have the Assistance of Counsel for his defence.

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

* * * nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## Statement of the Case

This case arises out of a jury trial involving an indictment in which Local and thirteen co-defendants were charged with conspiring to bribe Martin J. Hanley ("Hanley"), the State Supervisor of Small Loans. In response to a motion of the Commonwealth, Judge Quirico of the Superior Court (the trial court) ordered all of the defendants in the conspiracy indictment tried together, and ordered further that the trial of said indictment be held together with the trial of nineteen separate indictments in fifty-five counts charging Hanley with requesting or accepting bribes. Judge Quirico also denied motions for severance based upon Local's rights under the Sixth and Fourteenth Amendments.[2]

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[2] Local challenged the grouping and joinder for trial on constitutional grounds by objection and exception to the Commonwealth's Motion for Joinder; by a pre-trial motion for severance and various motions for severance and for mistrial during the course of the trial,

The trial consumed 222 trial days, over a period of about eleven months. During the course of the trial ,the Commonwealth introduced over 200 pieces of evidence against some, but not all, defendants. Approximately 100 days into the trial, following the allowance of the Commonwealth's Motion for a Preliminary Finding of Conspiracy [3] and portions of its Motion to Admit Exhibits and Testimony Against Local Finance Corporation,[4] the Court instructed the jury concerning changes in limitations on evidence previously admitted.[5] The Court's instructions were so complicated that Judge Quirico and counsel needed a chart to follow them as they were being given.[6] Some six months later the case was submitted to the jury. Although the Court's instructions at that time covered some 200 pages of transcript (a full day), Judge Quirico did not restate the evidentiary limitations.

Among all the defendants, Local stands alone. Ten of Local's co-defendants and Hanley had already been tried

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to the denial of which motions exceptions were saved; by Assignments of Error Nos. B-4, B-5, C-1, C-5, C-8, and D; and in its briefs before the Massachusetts Supreme Court (R. 10769-10770; R. 10396; R. 10775-10776; R. 10785-10787; R. 10945-10946; R. 11025-11027; R. 12452-12455, 12459, 12460; Tr. 4/28/67, pp. 65-68; 3 Tr. 230-232, 243-244; 22 Tr. 1401, 1402; 70 Tr. 3998-4000; 74 Tr. 4312-4313; 103 Tr. 6039; Brief of Local on Trial Issues at 18-29; Reply Brief of Local). The Supreme Judicial Court rejected these claims at App. A-22 through A-27.

[3] R. 10950, 13091.

[4] R. 10969-10974, 13100-13122.

[5] 103 Tr. 6016-6033. These instructions are attached hereto as Exhibit B.

[6] A copy of the chart is attached hereto as Exhibit A, and the judge's instructions are attached as Exhibit B. Local objected and excepted to these instructions (103 Tr. 6038), and made an oral motion for a mistrial on the grounds that they were too confusing for the jurors to follow (103 Tr. 6039). This issue was raised by Assignment of Error No. 16 (R. 12457) and in Local's brief before the Supreme Judicial Court. Brief of Local on Trial Issues at 16-17. The Supreme Judicial Court rejected this contention at App. A-185 to A-186.

in a previous five-months' trial concerning various indictments charging them with conspiracies and crimes completely different from the conspiracy alleged against Local. Eight of Local's later co-defendants and Hanley had been convicted at that trial. At the outset of Local's only trial, Local's counsel reminded the Court that the previous trial had nothing to do with Local's trial, and insisted that the two trials not be associated.[7] By this time, there had already been references to the "last trial."[8] Two of Local's motions for severance specifically mentioned the prejudice inuring to Local by its being put to trial with the co-defendants who had already been tried in the previous case.[9] Local's efforts to insulate this trial from the previous one were unavailing. The earlier trial came to be referred to euphemistically as "last year" or a "previous occasion."[10] The grouping of the two trials continued even at the appellate level. The cases were argued *seriatim* before the Supreme Judicial Court of Massachusetts, which rendered a single opinion covering both cases.[11] Failure to insulate the two trials from each other was not, however, a hard and fast rule. The trial court prevented Local from eliciting from the Commonwealth's two principal witnesses the fact that they knew the results of the first trial and

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[7] 5 Tr. 310, 324.

[8] Tr. 4/20/67 p. 39.

[9] R. 10945-10946; 22 Tr. 1401.

[10] See, e.g., 95 Tr. 5853 *et seq.*, 5871; Local's efforts to protect its rights even became the subject of jest in Court, as in the following statement by counsel for another defendant at 5 Tr. 340; "Again, Your Honor, in reviewing the last time, if Mr. Cohen will permit, I notice that the subject came up . . . ."

[11] Appendix A. Counsel for Local objected to the combination of the two cases in a single opinion, by requesting that the decision be re-written into two opinions. The Court denied said request. See Exhibits C and D attached hereto. For the result of this combination of cases, compare Appendix A, the complete opinion of the Supreme Judicial Court, with Appendix E, those portions of the opinion which, we submit, deal with Local's appeal.

the severity of the sanctions imposed on individuals and corporations by the trial court and by the Banking Commission.[12]

Another factor which makes Local unique among all of the defendants is that almost all of the key evidence heard by the jury was never introduced against Local, but only against its co-defendants.[13] Thus, not only was no representative of Local present at the meeting at Haskins and Sells at which the conspiracy was allegedly spawned, but evidence of that meeting was not even offered against Local. Likewise, no representative of Local was present at any of the other conspiratorial meetings at restaurants in Boston and the Commodore Hotel in New York, nor was any evidence of such other meetings offered against Local. In fact, no conspiratorial statements were ever attributed to Local's personnel.

Local, among all the defendants, was uniquely prejudiced by two items of evidence which, although never introduced against Local, substantially and directly reflected adversely on it. The first such item is contained in the testimony of Louis Schwartz, one of the Commonwealth's key witnesses, who was named in the indictment as a co-conspirator. Schwartz testified that in the course of a conversation concerning conspiratorial matters with Edward R. Newhall,

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[12] 73 Tr. 4249-4251; 122 Tr. 6764-6765. Despite the fact that this occurred on cross-examination, Local's counsel offered to prove that the witnesses were aware of the possibility of being sent to prison, and that their companies' licenses might be suspended for at least five months if they failed to cooperate with the Commonwealth (73 Tr. 4249-4250; 122 Tr. 6764-6765). Local later made oral and written motions for mistrial based on the exclusion of this evidence and duly excepted to their denial (R. 11042-11043; 141 Tr. 7223; 153 Tr. 7740). This issue was raised by Assignments of Error Nos. C-12 and C-20 (R. 12456, 12459), was argued in Local's Brief on Trial Issues at 14-16, and was decided adversely at App. A-178 through A-180.

[13] See the chart prepared by Judge Quirico, attached hereto as Exhibit A.

one of Local's co-defendants, Newhall asked Schwartz if he would have any objection if Local's president dropped an envelope off.[14] The effect of this testimony concerning an extrajudicial statement by a co-defendant can only be gauged in juxtaposition with further testimony of Schwartz which *was* admitted against Local. This further testimony was that Local's president telephoned Schwartz, inquiring whether he was going to be in. Within minutes, Local's president arrived at Schwartz's office, handed Schwartz a sealed envelope which felt like it contained several pieces of paper, and said, "This is for Martin." The following day, Hanley called and said, "Louis, I understand you have something for me."[15] We submit that without the evidence of the Newhall conversation, this latter testimony would be colorless. When taken together, the two items are highly damaging to Local.

The other such specific item which was damaging to Local, although not admitted against it, was Exhibit 161, a handwritten memorandum prepared out of court by another of the Commonwealth's principal witnesses, which purported to be a list of the members of a conspiracy to bribe Hanley. It contained a breakdown of the alleged proportionate shares of an $18,500 annual bribe to Hanley from the various loan companies listed. One of the ten listed companies was Local, in the amount of $1,000. Since this exhibit was not offered against Local, counsel voiced strenuous opposition to its admission with Local's name thereon. Counsel suggested that Local's name be excised from the exhibit. However, it was admitted without deleting Local's name, and the jury was permitted to examine it.[16]

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[14] 55 Tr. 3237. This testimony was offered only against Newhall and two other defendants. It was never offered nor admitted against Local.

[15] 55 Tr. 3239, 3243, 3248, 3249, 3255, 3259.

[16] 109 Tr. 6184, 6214-6219; 111 Tr. 6331-6332, 6371; 115 Tr. 6440-6444.

Two and one-half months after the Court had permitted the jury to see this exhibit with Local's name thereon, the Court, with the prosecution's assent, agreed that Local's name could now be masked.[17]

The joinder of Hanley's trial with that of Local created grave problems.[18] Hanley appeared *pro se*. He was not an experienced trial attorney, as any objective reading of his cross-examination of witnesses will abundantly demonstrate. One of the most astounding features of this unusual trial was Hanley's direct examination of himself in his own defense.[19] The jury was treated to the spectacle of Hanley on the witness stand questioning himself in one tone of voice and responding to himself in another. That this procedure eventually got out of hand is exemplified by the fact that one of his answers rambled for over ten pages.[20] All defense counsel in the conspiracy case were forced to sit for days in silent, helpless embarrassment while Hanley put on his ludicrous display.

Almost eleven months after it began, the trial ended when the jury returned verdicts of guilty as to each defendant on each indictment and count on which there had not been a prior directed verdict of acquittal. A fine was subsequently imposed on Local. On appeal, the Massachusetts Supreme Judicial Court, in a single opinion, rejected the federal constitutional claims set forth herein and affirmed the convictions of all the defendants in the first trial, of Local and its conspiracy co-defendants, and of Hanley on the separate substantive charges against him.

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[17] 166 Tr. 8366-8367.

[18] Local's constitutional challenges to the joinder are set forth in Note 3 *supra*. Local specifically referred to the dangers of a trial with Hanley at 3 Tr. 230, 243-244; 70 Tr. 3998-4000; 74 Tr. 4303-4306; R. 10945.

[19] 202 Tr. 10625 through 211 Tr. 10885.

[20] 202 Tr. 10650 through 10661.

## Reasons for Granting the Writ

THE JOINT TRIAL OF LOCAL TOGETHER WITH ITS CO-DEFENDANTS AND HANLEY VIOLATED LOCAL'S RIGHT TO DUE PROCESS.

Local's trial in the Superior Court furnishes an almost classic example of the evils which result from engulfing a defendant in a mass trial.[21] This Court has recognized the danger of transference to other defendants of the effect of evidence admitted only against particular defendants, and has stated that the safeguards against this transference should be made as impregnable as possible.[22] This Court has said, further, that in a mass conspiracy trial, "the proceedings are exceptional to our tradition and call for use of every safeguard to individualize each defendant in his relation to the mass."[23] The only safeguards erected for the protection of Local were the usual admonitions of the trial judge that the jury was to consider, as to each defendant, only that evidence which was introduced against him. As Mr. Justice Jackson pointed out in his concurring opinion in *Krulewitch* v. *United States*, 336 U.S. 440, 453 (1949), 69 S. Ct. 716, 723, the naive assumption that such an instruction can adequately protect a defendant in such

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[21] See Note, *The Challenge of the Mass Trial*, 68 Harv. L. Rev. 1046, 1047 (1955). This Note lists, among the prejudicial elements of a mass trial, (1) the overwhelming volume of testimony and large number of witnesses and exhibits, which may be so difficult for the jury to understand and retain that a rational verdict is practically impossible, (2) the restriction on representation by counsel, (3) the possibility that evidence may be admitted in one party's case which is prejudicial to another party, and (4) the possible detriment to a party caused by obstreperous or poorly conceived tactics of counsel for another party on the same side. All of these elements were present in Local's case.

[22] *Blumenthal* v. *United States*, 332 U.S. 539, 559-560 (1947), 68 S. Ct. 248, 257.

[23] *Kotteakos* v. *United States*, 328 U.S. 750, 773 (1946), 66 S. Ct. 1239, 1252.

a situation is known by all practicing lawyers to be "unmitigated fiction."

The prejudice which overwhelmed the flimsy barrier of the trial judge's instructions was manifest. The evidentiary limitations were so complex and the trial so lengthy that even the trial judge and counsel needed charts to understand the admission and exclusion of various items of evidence against various defendants.[24] The inundation of Local in a mass trial, and more particularly the burial of the evidence against Local in the mass of evidence admitted only against the other defendants, must have contributed to the verdict obtained.[25] The danger that Local was convicted on evidence not admitted against it is heightened by the fact that such a small proportion of the evidence at the trial was, indeed, admitted against Local.[26]

Local was hopelessly prejudiced by references to the previous trial. Local found itself engulfed in a single trial which, however overwhelming it may have seemed to this defendant, was apparently only one of many chapters in a continuing saga as far as most of Local's co-defendants were concerned. The specter of the previous trial hung over even the appellate stage of the case. Because the Supreme Judicial Court decided to combine both "small loans" cases[27] into one opinion, the decision on Local's appeal is buried almost irretrievably in the intricacies of what is, by any standard, an opinion of truly monumental length. It cannot seriously be contended that Local was "individualized" in its relation to the mass, not only with regard to its own trial, but also to the "small loans" cases as a whole.

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[24] See Exhibits A and B attached hereto.

[25] *Chapman* v. *California*, 386 U.S. 18, 24 (1967), 87 S. Ct. 824, 828.

[26] See Exhibit A attached hereto.

[27] App. A-1.

The prejudice which inured to Local because of the length of trial, complexity of evidentiary limitations, and chilling effect of the previous trial was intensified by Hanley's representation of himself. Any hope that order and clarity might somehow be imposed upon the chaos at the trial was dashed by Hanley's fumbling and ill-conceived defense. Hanley's presence in effect deprived Local of its right to assistance of counsel.[28] The fact that he sat at counsel table as an attorney throughout the trial added to the prejudice.

The confusion at the trial created a context "in which the risk that the jury will not, or cannot, follow instructions is so great, and the consequences of failure so vital to the defendant, that the practical and human limitations of the jury system cannot be ignored."[29] *Bruton* v. *United States*, 391 U.S. 123 (1968), 88 S. Ct. 1620, was decided a matter of days before the termination of the instant trial. Although its holding was specifically based upon the Confrontation Clause, counsel for Local regarded the decision as a clear indication that the Court would no longer countenance the reliance by lower courts upon the "unmitigated fiction" referred to by Mr. Justice Jackson in *Krulewitch*, *supra*. In doing so, we relied upon the Court's actions in specifically overruling *Delli Paoli* v. *United States*, 352 U.S. 232 (1956), 77 S. Ct. 294, the decision's quotation of, and implied reliance on, the dissent of Mr. Justice Frankfurter in *Delli Paoli*, 352 U.S. at 247, 248, 77 S. Ct. at 302, 303, the quotation of Mr. Justice Jackson's concurring opinion in *Krulewitch*, *supra*, the lengthy quotation of Chief Justice Traynor's opinion in *People* v. *Aranda*, 63 Cal. 2d 518, 528-

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[28] Local's contention that the joinder deprived it of its right to counsel was advanced at various pre-trial and trial motions and the arguments thereon (R. 10775; Tr. 4/28/67, p. 66; 70 Tr. 3998-4000).

[29] *Bruton* v. *United States*, 391 US. 123, 135 (1968), 88 S. Ct. 1620, 1627.

529, and the decision's reference to the various opinions of Judge Learned Hand and Judge Jerome Frank criticizing, in general, limiting instructions as a means of protecting a defendant against the effects of inadmissible evidence[30]

Local directed the trial court's attention to the *Bruton* decision within days after it was announced, not in reliance upon its specific holding, but rather because of its rationale concerning the inability of a jury to absorb and follow limiting instructions, especially in the fact of highly damaging evidence admitted solely against co-defendants.[31] However, the Supreme Judicial Court did not share our view of *Bruton*. In fact, that Court's opinion with regard to the claim that the jury could not or did not comprehend the evidentiary limitations relies specifically upon "our rule that jurors are expected to follow instructions to disregard matters withdrawn from their consideration,"[32] in apparent disregard of *Bruton's* specific holding overruling *Delli Paoli*.[33]

In reliance upon what we conceived to be the rationale of the decision in *Bruton*,[34] we placed great emphasis in our brief to the Supreme Judicial Court[35] upon the introduction of two specific pieces of evidence solely against co-defendants, to wit, the Newhall extrajudicial statement and Exhibit 161, the list of the members of a conspiracy to bribe Hanley.[36] Inasmuch as this evidence was not to

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[30] *Bruton* v. *United States*, *supra*, 391 U.S. at 126, 128-133, 88 S. Ct. at 1622-1626.

[31] 216 Tr. 11172-11176.

[32] App. A-123.

[33] *Bruton* v. *United States*, *supra*, 391 U.S. at 126, 88 S. Ct. at 1622.

[34] Our reliance upon *Bruton* was heightened by the decision in *Roberts* v. *Russell*, 392 U.S. 293 (1968), 88 S. Ct. 1921, which held that *Bruton* was to be applied retroactively, and was applicable to state prosecutions under the Fourteenth Amendment.

[35] Brief for Local on Trial Issues at 20-27.

[36] See pages 6-8 *supra*.

be admitted against Local, there was an obvious solution which would have protected Local without prejudicing the Commonwealth's case, to wit, the deletion of Local's name.[37] Instead, Local was left naked to prejudicial evidence which should never have been seen or heard by Local's jury.

The Newhall statement would seem to fit closely within the bounds of *Bruton*. The evidence in question concerned an extrajudicial statement directly implicating Local. Although Newhall testified, and was thus available for cross-examination by Local's counsel, he denied having made the statement in question and thus, as a practical matter, could not be cross-examined concerning it.[38] This Court's subsequent decision in *Nelson* v. *O'Neil*, 402 U.S. 622 (1971), 91 S. Ct. 1723, holds that the fact that a declarant disavows his extrajudicial statement on the witness stand is not the equivalent of an utter deprivation of the opportunity to cross-examine. *Nelson* may be distinguished because there the declarant proceeded to testify favorably to the petitioner concerning the underlying facts, a factor upon which the Court in part relied. 402 U.S. at 629, 91 S. Ct. at 1727. Here, however, Newhall gave no testimony favorable to Local concerning the underlying facts of the case.[39] Moreover, a general application of the rationale of *Nelson* would, we submit, substantially negate the effect of *Bruton*. As Mr. Justice Brennan points out in his dissent in *Nelson*, requiring a defendant to rely upon cross-examination to erase the prejudice of inadmissible evidence is to deny such defendant the equal protection of the laws.[40] The defendant

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[37] Local's counsel proposed that this be done with regard to Exhibit 161 (109 Tr. 6214-6215). This procedure is suggested in the case of an extrajudicial statement of a co-defendant by Section 2.3 (ii) of the American Bar Association Project on Minimum Standards for Criminal Justice, Standards Relating to Joinder and Severance.

[38] 168 Tr. 8464; 169 Tr. 8601.

[39] See Newhall's entire testimony at 168 Tr. 8455 through 170 Tr. 8638.

[40] *Nelson* v. *O'Neil*, *supra*, 402 U.S. at 634-635, 91 S. Ct. at 1730.

in such a case is placed in an untenable position. On the one hand, he may refrain from cross-examination, and rely upon the judge's instructions to insulate him from the effect of the damning evidence (a reliance which *Bruton* recognized as futile). On the other hand, he may cross-examine the declarant on the subject of the extrajudicial statement, and *thus render the statement admitted into evidence against him for all purposes.*[41] In either event, the effect is the same—an item of damaging evidence, otherwise inadmissible, is placed before the jury simply because the defendant happens to be tried jointly with others. We submit that this is as great a denial of Fourteenth Amendment rights as is a total lack of opportunity to cross-examine.

Local's trial was replete with the disadvantages which inure to a defendant embroiled in a mass trial. At some point, the combination of factors present in this case—the length of trial, the complexity of the evidentiary limitations, the highly prejudicial effect of the previous trial, the inept and damaging defense presented by Hanley *pro se*, and the admission into evidence against other defendants of Newhall's extrajudicial statement and Exhibit 161—overstepped the bounds of due process. We submit that Local's petition presents the Court with an obligation to define those bounds in the context of a mass trial.

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[41] This is not a remote possibility. In this trial, counsel for Local cross-examined Schwartz concerning an alleged demand for a bribe made by Hanley during the period of the alleged conspiracy (65 Tr. 3788-3789, 3797-3798). The purpose of this line of questioning was to suggest to the jury that it was unlikely that Schwartz and Local would be requested to pay a specific bribe if they were, indeed, part of a group which was allegedly paying Hanley regular annual bribes covering matters including the one in question. However, the Supreme Judicial Court relied in part upon this testimony in deciding that the evidence was sufficient to warrant a verdict against Local. App. A-176.

## Conclusion

Local stands alone.

1. It was not in the first trial.
2. It was not at the Haskins & Sells meeting in Newark, where the alleged conspiracy was spawned.
3. In July of 1957, Local's president left a *sealed* envelope with Louis Schwartz.
4. Sometime between March, 1958, and "sometime" in 1959 a Local employee delivered a sealed envelope to Schwartz after a call from Local mentioning *a* payment to Hanley.
5. End of evidence against Local.
6. Local engaged in no conspiratorial activities.
   a. No representative of Local was present at the Boston conspiratorial meetings.
   b. No representative of Local was at the Commodore Hotel meeting.
   c. No representative of Local ever discussed conspiratorial matters.

In view of the above, the conclusion is inescapable that Local was convicted, not on the evidence, but because of the infection and confusion of a mass trial and the trial that preceded it.

For the reasons presented, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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# EXHIBIT A*

RECORD OF ACTION OF COURT ON EIGHT (8) MOTIONS FILED BY COMMONWEALTH TO MAKE EVIDENCE ORIGINALLY ADMITTED AS TO PARTICULAR DEFENDANTS APPLICABLE TO ADDITIONAL DEFENDANTS

[Page 13107]

| ITEM NO. | DESCRIPTIVE TITLE OF EVIDENCE | TRANSCRIPT PAGES FROM PAGE | FROM LINE | THROUGH PAGE | THROUGH LINE | BEN. FIN. CO. | NEWHALL | FARRELL | GLENN | HOUSE F. CO. | BARBER | PRATT | LOCAL F. CO. | BEAN | WOODCOCK | HANLEY |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | LEGEND: X = Original limitation. W = Part of Motion Waived. A = Now *ALLOWED* as to this Deft. D = Now *DENIED* as to this Deft. | | | | | | | | | | | | | | | |
| | WITNESS: LOUIS SCHWARTZ | | | | | | | | | | | | | | | |
| 1. | Parker House Hotel lunch and Hanley demand for $50,000. | 3203 | 18 | 3206 | 11 | A | A | — | A | — | — | — | A | — | — | X |
| 2. | Newhall call to Schwartz after luncheon. | 3206 | 14 | 3208 | 11 | A | X | — | A | — | — | — | — | — | — | — |
| 3. | 1957 Meeting at Haskins & Sells office in Newark, N.J., and small meeting after luncheon | 3212<br>3220<br>3229 | 16<br>21<br>5 | 3216<br>3226<br>3230 | 12)<br>1)<br>7) | A | X | — | A | A | — | — | — | — | — | — |
| 4. | Two telephone conversations with Newhall after meeting. | 3231 | 21 | 3235 | 15 | A | X | — | A | — | — | — | — | — | — | — |
| 5. | Newhall visit to Schwartz and delivery of $2,000 for Hanley. | 3235 | 21 | 3238 | 19 | A | X | — | A | — | — | — | — | — | — | — |

* Exhibit A, prepared by Judge Quirico, shows the actions of the trial court on motions of the Commonwealth to extend the evidentiary limitations. It formed the basis of the court's instruction to the jury covering the extended limitations (103 Tr. 6016-6033).

LEGEND:
X = Original limitation.
W = Part of Motion Waived.
A = Now *ALLOWED* as to this Deft.
D = Now *DENIED* as to this Deft.

| ITEM NO. | DESCRIPTIVE TITLE OF EVIDENCE | TRANSCRIPT PAGES FROM PAGE | FROM LINE | THROUGH PAGE | THROUGH LINE | BEN. FIN. CO. | NEWHALL | FARRELL | GLYNN | HOUSE F. CO. | BARBER | PRATT | LOCAL F. CO. | BEAN | WOODCOCK | HANLEY |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | WITNESS: LOUIS SCHWARTZ | | | | | | | | | | | | | | | |
| 6. | John McHenry, Sr., call to Schwartz and delivery of envelope. | 3238 | last | 3251 | 21 | A | A | — | A | — | — | — | X | — | — | — |
| 7. | Schwartz telephone conversations with Hanley. | 3254 | 15 | 3261 | 10 | A | X | — | A | — | — | — | X | — | — | X |
| 8. | Delivery of envelopes by Schwartz to Hanley. | 3261 | 11 | 3275 | 13 | A | X | — | A | — | — | — | X | — | — | X |
| 9. | Schwartz payment of $250 to Hanley in March, 1958. | 3286 | 2 | 3293 | 14 | A | X | — | A | — | — | — | X | — | — | X |
| 10. | Schwartz payment of $250 to Hanley in June, 1958. | 3297 | 7 | 3304 | 20 | A | A | — | A | — | — | — | X | — | — | X |
| | [Page 13108] | | | | | | | | | | | | | | | |
| 11. | Schwartz payment of $250. to Hanley in September, 1958. | 3305<br>3311 | 5<br>12 | 3305<br>3316 | 11)<br>10) | A | A | — | A | — | — | — | X | — | — | X |
| 12. | John McHenry, Sr., telephone call to Schwartz and delivery of envelope for Hanley. | 3306 | 7 | 3311 | 11 | A | A | — | A | — | — | — | X | — | — | X |

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| | **WITNESS: LOUIS SCHWARTZ** | | | | | | | | | | | | | | | |
| 13. | Schwartz payment of $250 to Hanley in December, 1958 | 3318 | 23 | 3321 | last | A | X | — | A | — | — | — | X | — | — | X |
| 14. | Schwartz payment of $250 to Hanley in March, 1959. | 3327 | 10 | 3330 | 1 | A | — | — | A | — | — | — | X | — | — | X |
| 15. | Schwartz payment of $250 to Hanley in June, 1959. | 3330 | 10 | 3332 | 16 | A | — | D | A | — | — | — | X | — | — | X |
| 16. | Conversation with Glynn about cutting down in Dec., 1959. | 3333 | 23 | 3338 | 12 | A | — | A | X | A | — | — | — | — | — | — |
| 17. | Schwartz payment of $250 to Hanley in March, 1960. | 3338 | 20 | 3353 | 15 | A | — | — | X | A | — | — | X | — | — | X |
| 18. | Schwartz payment of $250 to Hanley in September, 1960 | 3353 | 16 | 3357 | 9 | A | — | — | X | A | — | — | X | — | — | X |
| 19. | Schwartz payment of $250 to Hanley in March, 1961. | 3357 | 10 | 3362 | 2 | A | — | — | X | A | — | A | X | — | — | X |
| 20. | Schwartz payment of $250 to Hanley in September, 1961. | 3362 | 3 | 3367 | 9 | A | — | — | X | A | — | A | X | — | — | X |

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| | WITNESS: LOUIS SCHWARTZ | | | | | | | | | | | | | | | |
| | **[Page 13109]** | | | | | | | | | | | | | | | |
| 21. | Schwartz payment of $250 to Hanley in March, 1962. | 3367 | 14 | 3370 | last | A | — | — | X | A | — | A | X | — | — | X |
| 22. | Schwartz payment of $250 to Hanley in September, 1962. | 3375 | 9 | 3384 | 18 | A | — | — | X | A | — | A | X | — | — | X |
| 23. | Schwartz payment of $250 to Hanley in March, 1963. | 3387 | 4 | 3390 | last | A | — | — | X | A | — | A | X | — | — | X |
| 24. | Schwartz payment of $250 to Hanley in October, 1963. | 3392 | 2 | 3392 | 24) | A | — | — | X | A | — | A | X | — | — | X |
| | | 3541 | 14 | 3550 | 12) | A | — | — | X | A | — | A | — | — | — | X |
| 25. | Schwartz and Glynn telephone conversation in 1961 or 1962. | 3410 | 23 | 3412 | 3 | A | — | — | X | A | — | A | — | — | — | — |

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| | WITNESS: JAMES NOONAN. | | | | | | | | | | | | | | | |
| | **[Page 13110]** | | | | | | | | | | | | | | | |
| 1. | Identification. | 4258 | 6 | 4260 | 11 | A | — | A | X | A | D | A | X | — | — | X |
| 2. | September 1962 luncheon at Locke Ober's. | 4260 | 12 | 4270 | 22 | A | — | A | X | A | D | A | X | — | — | X |
| | WITNESS: MICHAEL SANDS. | | | | | | | | | | | | | | | |
| 1. | Identification. | 4287 | 3 | 4289 | 7 | A | — | — | — | — | — | — | X | — | — | — |
| 2. | Delivery of envelope to Schwartz. | 4289 | 8 | 4292 | 13 | A | — | — | — | — | — | — | X | — | — | — |
| | WITNESS: WILLIAM F. HEATH | | | | | | | | | | | | | | | |
| | **[Page 13111]** | | | | | | | | | | | | | | | |
| 1. | Duck hunting trip to Isle de Grues in the fall of 1958 | 4605 | 3 | 4611 | 8 | A | — | — | X | D | — | — | — | — | — | X |

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| | WITNESS: WILLIAM F. HEATH | | | | | | | | | | | | | | | |
| 2. | Parker House lunch with Schwartz and Hanley and $50,000 demand | 4630 | 11 | 4638 | 12 | A | X | — | A | — | — | — | X | — | — | X |
| 3. | Report of lunch and demand by Hanley to Redfield | 4638 | 13 | 4638 | 23 | A | X | — | A | — | — | — | — | — | — | — |
| 4. | Heath's participation in payments to Hanley during 1958 | 4639<br>4675<br>4676 | 7<br>9<br>3 | 4643<br>4675<br>4676 | 6)<br>17)<br>8) | A | X | — | A | — | — | — | X | — | — | — |
| 5. | Conversations with Hanley about making payments on April 5 and September 15 | 4643 | 16 | 4646 | 17 | A | — | — | A | — | — | — | A | — | — | X |
| 6. | Report of Hanley conversations about April 15 and September 15 to Redfield | 4645 | 22 | 4646 | 21 | A | — | — | A | — | — | — | A | — | — | X |
| 7. | Heath's participation in a payment to Hanley during 1959 | 4673 | 7 | 4675 | 8 | A | — | D | A | — | — | — | X | — | — | — |

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| | WITNESS: WILLIAM F. HEATH | | | | | | | | | | | | | | | |
| 8. | Meeting with Cal Bean at Taunton Inn in summer 1959 | 4676 | 16 | 4680 | 12 | D | — | D | D | — | — | — | D | X | — | — |
| [Page 13112] | | | | | | | | | | | | | | | | |
| 9. | Report of Cal Bean meeting to Redfield | 4680 | 16 | 4681 | 4 | D | — | D | D | — | — | — | X | X | — | — |
| 10. | Conversations with Glynn about Bean's proposed expansion | 4681 | 10 | 4682 | 23 | A | — | — | X | — | — | — | D | — | — | — |
| 11. | Fact of conversations; Glynn conversation itself | 4681 | 10 | 4682 | 23 | A | — | D | X | — | — | — | D | X | — | — |
| 12. | Meeting in New York during late 1959 or early 1960 about expansion of program | 4683 | 7 | 4712 | 3 | A | — | X | X | A | — | — | D | — | — | — |
| 13. | Heath payment of $2325 to Hanley in May, 1960 | 4712 | 8 | 4714 | 12 | A | — | X | X | A | — | — | D | — | — | X |
| | | 4716 | 5 | | | D | — | X | X | D | — | — | D | — | — | X |
| 14. | Total amount of $4650 paid to Hanley during 1960 | 4714 | 13 | 4715 | 13 | A | — | X | X | A | — | — | D | — | — | X |

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| | WITNESS: WILLIAM F. HEATH | | | | | | | | | | | | | | | |
| 15. | Heath payment of $2325 to Hanley in September or October, 1960 | 4771 | 22 | 4788 | 18 | A | — | X | X | A | — | A | D | — | — | X |
| 16. | Payments to Hanley in 1961 | 4789 | 2 | 4791 | 20 | A | — | X | X | A | — | A | D | — | — | X |
| 17. | Conversation with Glynn in April, 1961 about $825 overpayment | 4792 | 5 | 4795 | 2 | A | — | X | X | A | — | A | D | — | — | — |
| **[Page 13113]** | | | | | | | | | | | | | | | | |
| 18. | $1500 payment to Hanley by Heath in April or May, 1961 | 4797 | 11 | 4806 | 12 | A | — | X | X | A | — | A | D | — | — | X |
| 19. | $1500 payment to Hanley in September or October, 1961 | 4807 | 4 | 4812 | 6 | A | — | X | X | A | — | A | D | — | — | X |
| 20. | Report of $825 advance is reported to Redfield and instructions received | 4812<br>4828 | 9<br>9 | 4821<br>4828 | 17)<br>22) | A | — | X | X | A | — | A | D | — | — | — |

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| | WITNESS: WILLIAM F. HEATH | | | | | | | | | | | | | | | |
| 21. | Conversation with Glynn about another $825 advance to Heath and Heath's report to Redfield | 4821 | 18 | 4824 | last | A | — | X | X | A | — | A | D | — | — | — |
| 22. | Receipt of $825 by mail from Redfield in fall of 1961 | 4825 | 1 | 4825 | 14 | A | — | X | X | A | — | A | D | — | — | — |
| 23. | Payment of $825 to Hanley | 4825 | 17 | 4827 | 17 | A | — | X | X | A | — | A | D | — | — | X |
| 24. | Total of $4650 paid to Hanley during 1962 | 4829 | 6 | 4835 | 1 | A | — | X | X | A | — | A | D | — | — | X |
| 25. | $2325 payment to Hanley in April or May, 1962 | 4835 | 5 | 4844 | 15 | A | — | X | X | A | — | A | D | — | — | X |
| 26. | Payment of $2375 to Hanley in September, 1962 | 4844 | 19 | 4860 | 8 | A | — | X | X | A | — | A | D | — | — | X |
| | [Page 13114] | | | | | | | | | | | | | | | |
| 27. | Conversation with Glynn about being early with payment | 4860 | 11 | 4864 | 4 | A | — | X | X | A | — | A | D | — | — | — |

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| | **WITNESS: WILLIAM F. HEATH** | | | | | | | | | | | | | | | |
| 28. | $2325 payment to Hanley in April, 1963 and Exhibits 152A-152B | 4864 | 8 | 4897 | 8 | A | — | X | X | A | A | A | W | — | — | X |
| 29. | Glynn, Heath and Pratt as a loose-knit committee of three-payments called M.J.H. Program | 4897 | 11 | 4914 | 2 | A | — | X | X | A | — | X | D | — | — | — |
| 30. | Meeting places of loose-knit committee | 4924 | 2 | 4924 | 16 | A | — | X | X | A | — | X | D | — | — | — |
| 31. | Conversation with Glynn about $50 shortage in September, 1962 payment | 4940 | 12 | 4948 | 17 | A | — | X | X | A | — | A | D | — | — | — |
| 32. | Lunch with Hanley, Noonan and Schwartz at Locke Ober's in September, 1962 | 4949 | 1 | 4961 | end | A | — | X | X | A | — | A | D | — | — | X |
| 33. | Reports of payments to loose-knit committee | 4979 | 14 | 4987 | 2 | A | — | X | X | A | — | X | D | — | — | — |

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| | WITNESS: WILLIAM F. HEATH | | | | | | | | | | | | | | | |
| 34. | Purcell's meeting in September, 1962 and receipt of Exhibit 153 from Glynn | 4987<br>5097 | 9<br>9 | 4998<br>5113 | 10)<br>14) | A | — | X | X | A | A | X | D | — | — | — |
| | **[Page 13115]** | | | | | | | | | | | | | | | |
| 35. | Explanation of Exhibit 153 and other entries | 4998 | 11 | 5018 | 16 | A | — | X | X | A | A | X | D | — | — | — |
| 36. | Hotel Commodore meeting in New York on October 17, 1962 | 5123 | 9 | 5155 | 19 | A | — | X | X | A | X | X | D | — | X | — |
| 37. | Conversation with Glynn about status of September, 1962 State, Family and Seaboard payments of Hanley program and note on ID 557 | 5162<br>5171 | 22<br>14 | 5170<br>5175 | 2)<br>4) | A | — | X | X | A | A | A | D | — | — | — |
| 38. | Calculations with Glynn and Pratt on status of M.J.H. Program | 5175 | 24 | 5183 | 8 | A | — | X | X | A | D | X | D | — | — | — |
| 39. | Statements by Pratt that Lerch and Barber would be in town | 5183 | 9 | 5186 | 10 | A | — | A | A | A | D | X | D | — | — | — |

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| | WITNESS: WILLIAM F. HEATH | | | | | | | | | | | | | | | |
| 40. | Conversations with Glynn about status of Beneficial payments | 5186 | 11 | 5187 | 13 | A | — | A | X | A | D | A | D | — | — | — |
| 41. | Conversations with Glynn about Seaboard cashier's check | 5187 | 16 | 5188 | 23 | A | — | A | X | A | D | A | D | — | — | — |
| 42. | Heath notations on ID 557 | 5189 | 1 | 5190 | 4 | D | — | D | — | D | D | D | D | — | X | — |
| | | 5189 | 1 | 5190 | 21 | — | — | — | D | — | — | — | — | — | X | — |
| 43. | Other Heath notations on ID 557 | 5190 | 7 | 5190 | 21 | D | — | D | X | D | D | D | D | — | — | — |
| [Page 13116] | | | | | | | | | | | | | | | | |
| 44. | Meeting with Barber at Hotel Statler, September, 1963 | 5238 | 5 | 5250 | 13 | A | — | A | A | A | X | X | W | — | — | — |
| | | | | | | | | | | | | part A | Rest as to Pratt | | | |
| 45. | Conversation about Beneficial's April, 1963 payment to Hanley | 5250 | 16 | 5251 | 20 | A | — | A | X | A | A | A | W | — | — | — |
| 46. | Change of location of Public Finance-Athol, New Bedford, and Boston, Mass. offices | 5265 | 15 | 5266 | 11 | — | — | D | D | D | D | D | D | — | — | X |

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| | WITNESS: WILLIAM F. HEATH | | | | | | | | | | | | | | | |
| 47. | Conversations with Hanley concerning the change of location of Public Finance Boston 44 Office | 5266<br>5290 | 12<br>1 | 5279<br>5290 | 24)<br>19) | — | — | A | A | A | D | A | D | — | — | X |
| 48. | Conversations with Hanley concerning the changes of locations of Public Finance offices other than Boston 44 | 5279 | last | 5281 | 10 | — | — | D | D | D | D | D | D | — | — | X |
| 49. | 1960 Revision of Regulations, Temporary Regulations and conversations with Hanley concerning American Investment's wishes | 5290<br>5295 | 23<br>9 | 5292<br>5296 | 13<br>5 | —<br>— | —<br>— | D<br>— | D<br>— | D<br>D | D<br>D | D<br>D | D<br>D | —<br>— | —<br>— | X<br>X |
| 50. | Conversations with Hanley concerning American Investment's desires for Annual Reports | 5293 | 4 | 5295 | 8 | D | — | D | D | D | D | D | D | — | — | X |

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| | WITNESS: WILLIAM F. HEATH | | | | | | | | | | | | | | | |
| | **[Page 13117]** | | | | | | | | | | | | | | | |
| 51. | Conversation with Hanley concerning effect of the delay in the Hanley program upon Regulations | 5296 | 6 | 5297 | 17 | A | — | A | A | A | D | A | D | — | — | X |
| 52. | Conversations with Hanley in 1960 occurring prior to receipt of money from Boudreau and concerning monthly reports | 5297 | 18 | 5301 | 3 | D | — | D | D | D | D | D | D | — | — | X |
| 53. | Meeting with Hanley, Leadbetter, Glynn and Miller at Wequassett Inn and inn at Nauset Beach in first week of June, 1960 | 5302 | 2 | 5305 | 22 | A | — | A | A | A | D | A | D | — | — | X |

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| | **WITNESS: WILLIAM F. HEATH** | | | | | | | | | | | | | | | |
| 54. | Discussions concerning Regulations at meeting at Wequassett Inn and inn at Nauset Beach | 5305 | 25 | 5310 | 1 | A | — | A | X | A | D | A | D | — | — | X |
| 55. | Meeting with Hanley, Leadbetter, Halloran, Glynn and others at the Colony in Swampscott | 5310 | 2 | 5313 | 17 | A | — | A | X | A | D | A | D | — | — | X |
| 56. | Meeting in Provincetown Inn in July 1960 and Hanley's written permission not to file long form monthly report | 5313<br>5320 | 18<br>22 | 5315<br>5325 | 21)<br>25) | A | — | A | X | A | D | A | D | — | — | X |
| | **[Page 13118]** | | | | | | | | | | | | | | | |
| 57. | Exhibit 154 | 5315 | 22 | 5316 | 20 | D | — | D | D | D | D | D | D | — | — | X |
| 58. | Issuance of proposed regulations by Bureau of Loan Agencies | 5326 | 1 | 5326 | 21 | A | — | A | X | A | D | A | D | — | — | X |

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| | WITNESS: WILLIAM F. HEATH | | | | | | | | | | | | | | | |
| 59. | Heath conversation with Hanley with respect to license fees | 5327 | 4 | 5329 | 13 | D | — | D | D | D | D | D | D | — | — | X |
| 60. | Heath conversation with Hanley with respect to license fees | 5330 | 7 | 5332 | 24 | D | — | D | — | D | D | D | D | — | — | X |
| 61. | Discussions concerning license fees with Hanley, Glynn, Miller and Leadbetter | 5329 | 16 | 5329 | 25 | A | — | A | X | A | D | A | D | — | — | X |
| 62. | Meeting at Motel 128 in November, 1960 with Hanley, Glynn, Leadbetter about final form of regulations | 5333 | 22 | 5341 | 8 | A | — | A | X | A | D | A | D | — | — | X |
| 63. | Meeting with Hanley and Glynn and Miller about Regulations occurring after Motel 128 meeting and prior to issuance of final Regulations | 5341 | 9 | 5344 | 17 | A | — | A | X | A | D | A | D | — | — | X |

| ITEM NO. | LEGEND:<br>X = Original limitation.<br>W = Part of Motion Waived.<br>A = Now *ALLOWED* as to this Deft.<br>D = Now *DENIED* as to this Deft.<br><br>DESCRIPTIVE TITLE OF EVIDENCE | TRANSCRIPT PAGES<br>FROM PAGE | FROM LINE | THROUGH PAGE | THROUGH LINE | BEN. FIN. CO. | NEWHALL | FARRELL | GLYNN | HOUSE F. CO. | BARBER | PRATT | LOCAL F. CO. | BEAN | WOODCOCK | HANLEY |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | **WITNESS: WILLIAM F. HEATH** | | | | | | | | | | | | | | | |
| | **[Page 13119]** | | | | | | | | | | | | | | | |
| 64. | Conversation with Hanley after meeting with Hanley, Glynn, and Miller and filing of final regulations | 5344 | 18 | 5346 | 1 | D | — | D | D | D | D | D | D | — | — | X |
| 65. | Heath handled approval of legal forms for his company and convention with Hanley about approval | 5346 | 2 | 5347 | 2 | D | — | D | D | D | D | D | D | — | — | X |
| 66. | Conversations with Hanley in 1958 with respect to Schedule O of the annual report form | 5347 | 7 | 5350 | 20 | D | — | — | — | — | — | — | — | — | — | X |
| 67. | Meeting between Hanley, Heath, Glynn, McHenry, Sr. in Hanley's office concerning Schedule O | 5350 | 24 | 5355 | 11 | A | — | — | X | — | — | — | X | — | — | X |

| ITEM NO. | LEGEND: X = Original limitation. W = Part of Motion Waived. A = Now *ALLOWED* as to this Deft. D = Now *DENIED* as to this Deft. DESCRIPTIVE TITLE OF EVIDENCE | TRANSCRIPT PAGES FROM PAGE | FROM LINE | THROUGH PAGE | THROUGH LINE | BEN. FIN. CO. | NEWHALL | FARRELL | GLYNN | HOUSE F. CO. | BARBER | PRATT | LOCAL F. CO. | BEAN | WOODCOCK | HANLEY |
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| | WITNESS: WILLIAM F. HEATH | | | | | | | | | | | | | | | |
| 68. | Conversation with Hanley after the meeting concerning Schedule O and the annual arrangement | 5356 | 23 | 5358 | 19 | D | — | — | — | — | — | — | — | — | — | X |
| 69. | Chatham Bars Inn meeting in 1962 concerning C & A | 5359 | 4 | 5363 | 1 | A | — | A | X | A | D | A | D | — | — | X |
| 70. | Payment of bills at Chatham Bars Inn, Wequasset Inn, Nauset Beach, Provincetown Inn, Colonial Motel, Route 128 meetings | 5363 | 2 | 5364 | 17 | A | — | A | X | A | D | A | D | — | — | X |
| [Page 13120] | | | | | | | | | | | | | | | | |
| 71. | Conversation with Hanley about renumbering of loans and about other matters | 5364 | 24 | 5367 | 3 | D | — | D | D | D | D | D | D | — | — | X |

[Page 13121]

UNOFFICIAL TABULATION OF ACTION TAKEN BY COURT ON MOTIONS OF COMMONWEALTH TO ADMIT CERTAIN EXHIBITS AND TESTIMONY AGAINST ADDITIONAL DEFENDANTS

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Motion As To:

1. BENEFICIAL FINANCE CO.:
   - Allowed: 1-31, 34-36, 37 (in part), 38-65, 68, 69, 71, 73-76, 78, 80-82, 85, 87, 89, 91-94
   - Denied: 32, 33, 37 (in part), 66, 67, 70, 72, 77, 79, 83, 84, 86, 88, 90
2. EDWARD R. NEWHALL:
   - Allowed: 1-5
   - Denied:
3. JOHN M. FARRELL:
   - Allowed: 2, 7-9, 12, 13, 15, 19, 21-24, 26, 28-30, 33, 35, 36, 37
   - Denied: 1, 3-6, 10, 11, 14, 16-18, 20, 25, 27, 31, 32, 34
4. FRANCIS T. GLYNN:
   - Allowed: 1-21, 24, 26, 28, 32, 34
   - Denied: 22, 23, 25, 27, 29-31, 33, 35-39
   - No Action: 40, 41
5. HOUSEHOLD FINANCE CORPORATION:
   - Allowed: 1-11, 13 (in part), 15-42, 45, 46, 48, 52, 54-57, 59, 61-63, 66, 68-70
   - Denied: 12, 13 (in part), 43, 44, 47, 49-51, 53, 58, 60, 64, 65, 67

[Page 13122]

6. NATHANIEL W. BARBER:
   - Allowed: 1-3, 9a, 10
   - Denied: 4-9, 11-34
7. JAMES S. PRATT
   - Allowed: 1-26, 29, 30, 32, 36, 38-41, 43, 45-47, 50, 52-54
   - Denied: 27, 28, 31, 33-35, 37, 42, 44, 48, 49, 51
8. LOCAL FINANCE CORPORATION:
   - Allowed: 1-3
   - Denied: 4-22, 24, 37, 40-61
   - Waived: 23, 38, 39

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## EXHIBIT B*

[103 Tr. 6016] From time to time during the course of this trial evidence consisting of either testimony of a witness or exhibits has been admitted with stated limitations that the evidence was applicable only as to certain named defendants. On a number of occasions this Court has instructed the jurors that they must pay attention to such limitations and that they must give effect to them and that their ultimate deliberations and decision as to any particular defendant must be based only on the evidence admitted against or as to that defendant.

No evidence may be considered for or against any defendant if it was so limited that it did not apply to that defendant. These instructions still apply, and you are now and will continue to be governed by them until you have completed your service in this case.

For some days past while you jurors have been absent from the courtroom, the Court has been hearing motions filed by the Commonwealth requesting that certain evidence, originally [6017] limited to one or several specified defendants when it was originally admitted, be now admitted, as to additional defendants. The motions were argued at length, and they have been considered and acted upon by the Court. The effect of the action of the Court is that certain portions of the evidence originally limited in its application has now been admitted as to additional defendants, these additional defendants being defendants named in Indictment No. 11,908.

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* Exhibit B is the instructions given by the trial court to the jury after the expansion of evidentiary limitations. Although the case was not submitted to the jury for almost six months after this instruction was given, the limitations were never restated for the jury. Therefore, this instruction was the barrier upon which the defendants had to rely for protection against transference of the effect of inadmissible evidence.

[6018] You have now been called to the courtroom so that the Court may inform you of the changes which it has thus made in the original limitations and of the additional defendants as to which each of a number of parts of the evidence is now admitted.

In the process of informing you of these changes in limitations, the Court will not read any testimony or exhibits to you verbatim, neither will it attempt to give you a narrative or summary or synopsis of the testimony or the exhibit in question. The Court will simply tell you enough about the particular portion of the evidence so that you may be able to identify and recall that evidence and thereafter consider it as evidence with reference to any defendant as to whom or as to which it is now admitted.

The language which I may use in referring to the evidence in question is not itself evidence, or what I say is not evidence. The evidence is what the witness said or what the exhibit itself says or shows, and not what I may say about it, since I am going to speak only to enable you to identify the evidence or exhibit in question. It is the evidence as contained in the testimony of the witness or as contained in the particular exhibit which you must then consider as to the additional defendants and not what I say about that evidence.

The Court may refer to testimony about a conversation. That does not mean that the witness testifying to that used [6019] the same words which I may use, nor does it mean that the witness in his own testimony quoted any such conversation verbatim. In many instances, as you will recall, the witness or witnesses testifying about conversations purported to give the substance of what was said and not the exact words. Nothing which I say can change that. It is what the witnesses said which governs.

The Court may make reference to certain portions of the testimony of witnesses who, when testifying about that,

said that they were "not sure" or they were "not certain" or that their memory was vague, or that it was hazy. Nothing which I may say about the testimony by way of referring to it changes what the witness said in that regard or in any other regard. You must recall the testimony as the witness gave it, aided only by what I say, so that you may identify what it is that you must recall.

You jurors are the sole judges of the veracity or the credibility of the testimony given by every witness in this trial, and you are also the sole judges of the weight to be given to all of the evidence. Nothing which I say nor the fact alone that I am referring to any particular portion of the evidence affects your responsibility as sole judges of the credibility and weight. You continue to be the sole judges of the credibility and weight.

In referring to portions of the evidence, the Court is [6020] not making any decision or determination as to its credibility or weight. The Court is not permitted or required to do so by law when a jury participates in a trial. That is your job, and you should draw no inferences or conclusions from what I say that I am in any way passing upon the credibility or weight of the evidence to which I refer, or that I am in any way passing upon its importance or relative importance in relation to any other evidence.

Nothing which I say to you should be construed by you as admitting into evidence for a second time as to any defendant, any evidence which was previously admitted as to that defendant.

As to each portion of the evidence on which limitations have been changed, I shall inform you of the change in limitations by giving you the names of the additional defendants as to whom or as to which it is now admitted.

The evidence as to which this Court has allowed the Commonwealth's motion for changes in limitations includes some of the testimony of Louis Schwartz and William F. Heath,

and all of the testimony given in direct-examination by James Noonan and Michael Sands. Most of the evidence on which the limitations have been changed was originally admitted as to one or more of the defendants named in Indictment 11908, but some changes have also been made on the limitations originally imposed on evidence admitted only as to the defendant Hanley on indictments other than 11908.

[6021] All of the changes which the Court has now allowed in the original limitations imposed on evidence take the form and have the effect of permitting certain specified portions of the evidence to be admitted now as to specified defendants on Indictment 11908 only, such evidence not having been admitted as to them previously.

The changes in limitations which the Court has now allowed do not admit any new evidence or additional evidence against any defendants in indictments other than 11908. For this reason, in any instance in which the Court states that the evidence is now being admitted as to additional defendants, it is speaking of those defendants only as to Indictment 11908, and only those defendants whose names I will give you as to each item or groups of items of evidence on which a change has been made.

I do not by that mean that all of these defendants or any number of them are here on indictments other than 11908. I am simply limiting what I say to Indictment 11908, and as to the particular defendants whose names I shall give to you with reference to each item of evidence on which there has been a change.

The changes which this Court has made in the limitations on the applicability of evidence are the following, and you will be required to give effect to such changes. I am going to give you these changes in the order in which the evidence was presented [6022] during the course of this

trial. I will identify the witness who was giving testimony when the particular portions of evidence were offered.

So that the record may be easier to follow, I am going to assign numbers to these items of evidence. These numbers, of course, were not contained in the testimony of witnesses, and the numbers which I am assigning are just so that counsel may better identify them in the transcript.

The first kind of evidence with which we deal is testimony of Louis Schwartz:

1. The testimony of Schwartz concerning the Parker House lunch of June, 1957, is now admitted as to the defendants Beneficial Finance Co., Edward Newhall, Francis Glynn, and Local Finance Corporation.

From this point on, with the other numbers, I am going to shorten my statement of the names of the defendants by using the last names of individual defendants and by using the word "Beneficial" wherever I mean Beneficial Finance Co., and using the word "Local" wherever I mean Local Finance Corporation.

That was No. 1.

2. The testimony of Schwartz concerning a telephone invitation from Newhall to Schwartz to attend a meeting at Haskins & Sells is now admitted as to the defendants Beneficial and Glynn.

[6023] 3. The testimony of Schwartz concerning the Haskins & Sells meeting in June, 1957, is now admitted as to Beneficial, Glynn and Household Finance Corporation.

I shall hereafter refer to Household Finance Corporation as "Household."

4. The testimony of Schwartz concerning Newhall's two telephone talks with Schwartz after the Haskins & Sells meeting is now admitted as to Beneficial and Glynn.

5. The testimony of Schwartz concerning Newhall's visits to Schwartz's office in July of 1957 and concerning

delivery of money to Schwartz is now admitted as to Beneficial and Glynn.

6. The testimony of Schwartz concerning John McHenry, Sr.'s, telephone call to Schwartz and his delivery of an envelope to Schwartz is now admitted as to Beneficial, Newhall and Glynn.

7. The testimony of Schwartz concerning Schwartz-Hanley telephone calls in July of 1957 is now admitted as to Beneficial and Glynn.

8. The testimony of Schwartz concerning Schwartz's delivery of envelopes to Hanley at Schwartz's home is now admitted as to Beneficial and Glynn.

9. The testimony of Schwartz concerning Schwartz's payment to Hanley in March, 1958, is now admitted as to Beneficial and Glynn.

10. The testimony of Schwartz concerning Schwartz's [6024] payment to Hanley in June, 1958, and September, 1958, is now admitted as to Beneficial, Newhall and Glynn.

11. The testimony of Schwartz concerning John McHenry, Sr.'s, telephone call to Schwartz and the delivery of an envelope by Mr. Sands is now admitted as to Beneficial, Newhall and Glynn.

12. The testimony of Schwartz concerning Schwartz's payments to Hanley in December, 1958, March, 1959, and June, 1959, is now admitted as to Beneficial and Glynn.

13. The testimony of Schwartz concerning Schwartz's telephone conversation with Glynn in December of 1959 or in early 1960 is now admitted as to Beneficial, the defendant John Farrell—to whom I shall refer hereafter as Farrell—and Household.

14. Testimony of Schwartz concerning Schwartz's payments to Hanley in March, 1960, and September, 1960, is admitted as to the defendants Beneficial and Household.

15. The testimony of Schwartz concerning Schwartz's payments to Hanley in March, 1961, September, 1961,

March, 1962, September, 1962, March, 1963, and October, 1963, is now admitted as to Beneficial, Household and Pratt—that is James S. Pratt.

16. The testimony of Schwartz concerning Schwartz's telephone conversations with Glynn in 1960 or 1961 is now admitted as to Beneficial, Household and Pratt.

17. The testimony of the witness James Noonan on [6025] direct-examination is admitted as to Beneficial, Farrell, Household and Pratt.

18. The testimony of Schwartz concerning ....

Excuse me. 16 ended my reference to the testimony of Schwartz. 17 was a single reference to testimony of the witness James Noonan.

18 is a single reference to the testimony of Michael Sands. The testimony of Michael Sands on direct-examination is admitted as to Beneficial.

I shall now refer to items of testimony by the witness William Heath for the rest of my remarks.

19. The testimony of Heath concerning the 1958 hunting trip to Canada is admitted as to Beneficial.

20. The testimony of Heath concerning the Parker House lunch of June, 1957, is admitted as to Beneficial and Glynn.

21. The testimony of Heath concerning his report to Redfield on the Parker House lunch is admitted as to Beneficial and Glynn.

22. The testimony of Heath concerning his participation in behalf of his company in 1958 payments to Hanley is admitted as to Beneficial and Glynn.

23. The testimony of Heath concerning his talk with Hanley in early 1959 about semi-annual payments is admitted as to Beneficial, Glynn and Local.

24. The testimony of Heath concerning his report to [6026] Redfield of his talk about semi-annual payments is admitted as to Beneficial, Glynn and Local.

25. The testimony of Heath concerning his participation on behalf of his company in a 1959 payment to Hanley is admitted as to Beneficial and Glynn.

26. The testimony of Heath concerning his talk with Glynn about his, Heath's, meeting with Bean is admitted as to the defendant Beneficial.

27. The testimony of Heath concerning a meeting at New York at the Hotel Roosevelt or the Hotel Commodore in late 1959 or the first half of 1960 is admitted as to Beneficial and Household.

28. The testimony of Heath concerning his payment to Hanley in May, 1960, is admitted as to Beneficial and Household.

29. The testimony of Heath concerning the total amount paid by him to Hanley during 1960 is admitted as to Beneficial and Household.

30. The testimony of Heath concerning his payment to Hanley in September or October of 1960 is admitted as to Beneficial, Household and Pratt.

31. The testimony of Heath concerning the total amount paid by him to Hanley in 1961 is admitted as to Beneficial, Household and Pratt.

32. The testimony of Heath concerning the conversation between him and Glynn in April of 1961, about an advance by [6027] Glynn is admitted as to Beneficial, Household and Pratt.

33. The testimony of Heath concerning his payments to Hanley in April or May of 1961 and in September or October of 1961 is admitted as to Beneficial, Household and Pratt.

34. The testimony of Heath concerning his report to Redfield of the advance by Glynn and instructions received from Redfield is admitted as to Beneficial, Household and Pratt.

35. The testimony of Heath concerning his request to Glynn for another advance, concerning Glynn's reply thereto, and concerning Heath's report to Redfield, is admitted as to Beneficial, Household and Pratt.

36. The testimony of Heath concerning his receipt of money from Redfield by mail in the Fall of 1961 is admitted as to Beneficial, Household and Pratt.

37. The testimony of Heath concerning his second payment to Hanley in the Fall of 1961, the total amount paid by him to Hanley during 1962, concerning his payment to Hanley in April or May, 1962, and concerning his payment to Hanley in September, 1962, is admitted as to Beneficial, Household and Pratt.

38. The testimony of Heath concerning his talk with Glynn about Heath being early with a payment in September of 1962 is admitted as to Beneficial, Household and Pratt.

39. The testimony of Heath concerning his receipt of money by mail from Redfield in April, 1963, concerning Exhibits 152-A and 152-B, and concerning payment to Hanley in April, [6028] 1963, is admitted as to Beneficial, Household, Barber and Pratt.

40. The testimony of Heath concerning the loose-knit committee of three and concerning where the committee met is admitted as to Beneficial and Household.

41. The testimony of Heath concerning his conversation with Glynn about a shortage in his, Heath's, September, 1962, payment is admitted as to Beneficial, Household and Pratt.

[6029] 42. The testimony of Heath concerning the lunch at the Locke Ober Restaurant in September 1962 is admitted as to Beneficial, Household, and Pratt.

43. The testimony of Heath concerning his reports to the loose-knit committee about his payments to Hanley is admitted as to Beneficial and Household.

44. The testimony of Heath concerning a meeting at Purcell's Restaurant in October of 1962 is admitted as to Beneficial, Household, and Barber.

45. The testimony of Heath concerning Heath's explanation of abbreviations on Exhibit 153 is admitted as to Beneficial, Household, and Barber.

46. The testimony of Heath concerning a meeting at the Hotel Commodore in New York on October 17, 1962, is admitted as to Beneficial and Household.

47. The testimony of Heath concerning his talk with Glynn about payments on hand and about the note or notation on the lower one-third of Exhibit for Identification Id. 557 is admitted as to Beneficial, Household, Barber, and Pratt.

48. The testimony of Heath concerning calculations made in the presence of members of the loose-knit committee in 1961 and 1962 is admitted as to Beneficial and Household.

49. The testimony of Heath concerning a statement of Pratt that another named person or persons would be in town is admitted as to Beneficial, Farrell, Glynn, and Household.

[6030] 50. The testimony of Heath concerning Glynn's statements to him about the status of Beneficial payments is admitted as to Beneficial, Farrell, Household, and Pratt.

And when I use the word "Beneficial" there in connection with the Beneficial payments, I do not say to you that the conversation was that it was Beneficial Finance Co. I told you that when I use "Beneficial" I am referring to Beneficial Finance Co., but that's only where I am using "Beneficial" as the name of a defendant as to which the evidence is being admitted.

51. The testimony of Heath concerning Glynn's statements to him about a cashier's check is admitted as to Beneficial, Farrell, Household, and Pratt.

52. The testimony of Heath concerning his meeting with Barber at the Hotel Statler in September of 1963 is admitted as to Beneficial, Farrell, Glynn, and Household. Part of that testimony was previously admitted as to the defendant Pratt. The balance of that testimony concerning that meeting is now admitted as to the defendant Pratt.

53. The testimony of Heath concerning Glynn's statement to him about Beneficial's April 1963 payment is admitted as to Beneficial, Farrell, Household, Barber, and Pratt.

Now, what I said to you about using the word "Beneficial" in connection with the statement, "Beneficial's April 1963 payment," or, rather, which I used the word "Beneficial" in [6031] that connection, I am not using it to mean Beneficial Finance Co., the defendant, to which I have been referring as "Beneficial". You must recall the testimony as given by the witness in that regard.

54. The testimony of Heath concerning his talk with Hanley about a change of location of Public Finance Boston 44 office is admitted as to Farrell, Glynn, Household, and Pratt.

55. The testimony of Heath concerning his talk with Hanley about delay in the Hanley program and action on Regulations is admitted as to Beneficial, Farrell, Glynn, Household, and Pratt.

56. The testimony of Heath concerning a meeting at the Wequasset Inn and at Nauset Beach is admitted as to Beneficial, Farrell, Glynn, Household, and Pratt.

57. The testimony of Heath concerning the discussion on Regulations at the Wequasset Inn and at Nauset Beach is admitted as to Beneficial, Glynn, Household, and Pratt.

58. The testimony of Heath concerning a meeting at The Colony in Swampscott is admitted as to Beneficial, Farrell, Household, and Pratt.

59. The testimony of Heath concerning a meeting at Provincetown Inn in 1960 is admitted as to Beneficial, Farrell, Household, and Pratt.

60. The testimony of Heath concerning the issuance of proposed Regulations by the Bureau of Loan Agencies is admitted [6032] as to Beneficial, Farrell, Household, and Pratt.

61. The testimony of Heath concerning discussions in 1960 relating to the amount of the annual license fee is admitted as to Beneficial, Farrell, Household, and Pratt.

62. The testimony of Heath concerning a meeting at the Motel 128 in November of 1960 is admitted as to Beneficial, Farrell, Household, and Pratt.

63. The testimony of Heath concerning a meeting about Regulations which occurred after the Motel 128 meeting is admitted as to Beneficial, Farrell, Household, and Pratt.

64. The testimony of Heath concerning a meeting in 1958 in Hanley's office about Schedule O is admitted as to Beneficial.

65. The testimony of Heath concerning a meeting at Chatham Bars Inn in August 1962 is admitted as to Beneficial, Farrell, Household, and Pratt.

66. The testimony of Heath concerning the payment of bills at certain inns and motels is admitted as to Beneficial, Farrell, Household, and Pratt.

That completes the Court's statement of the identification of portions of testimony on which changes in limitations have been ordered. I told you, before I started making this statement of the list of items of evidence affected, that you should give effect to the changes which I have ordered. I repeat that with this proviso, and that is that in the final instructions [6033] to be given to you when the case is submitted to you for deliberation the Court will treat further on how these limitations are to be applied and is to instruct you on certain facts which you are permitted

to find and certain facts which you are required to find before you apply any of this evidence against the defendants as to whom I have this day admitted it, because as to this evidence and as to certain other evidence which has already been admitted in this trial against certain defendants the applicability of such evidence as to such defendants will depend upon facts to be found by you; and I shall give you full and complete instructions in that regard in the final instructions before you retire to deliberate.

EXHIBIT C

November 10, 1971

The Honorable G. Joseph Tauro
Chief Justice, Supreme Judicial Court
New Courthouse
Pemberton Square
Boston, Massachusetts

My dear Mr. Chief Justice Tauro:

In re Small Loans Appeal No. 14,585

I am writing this letter as counsel for Local Finance Corporation, which I represented in Appeal No. 15,585. The single decision of the Supreme Judicial Court, returned on November 4, 1971, covers the subject appeal, together with Appeal No. 14,584. Although I do not expect the Court to reverse its decision as far as Local is concerned, request is hereby made that the decision be rewritten. The grounds for this request are as follows:

1. Local Finance Corporation was not a defendant in the first of the "Small Loans" trials covered by Appeal No. 14,584. As the opinion itself makes clear, the facts, the parties, and the crimes alleged were different in the two cases. Local constantly resisted being tried together with the defendant Hanley and the other defendants in Indictment 11,908. It did not prevail upon this point. However, as a result of the representations of various defendants, the cases were argued in the following manner:

(a) Pretrial issues, common to certain defendants in both trials, were separately briefed and argued.

(b) The appeals from the first trial (No. 14,584) were then argued by the defendants and the Commonwealth.

(c) The appeals from the second trial (No. 14,585)

were then argued by the defendants and the Commonwealth.

I feel certain that it was the impression of all counsel that the two appeals were heard, as they should have been, as two distinct criminal cases. It comes as a disturbing surprise to find my client grouped in the same opinion with the defendants and charges in the first trial. This is not merely a matter of style or form. It is Local's intention to file a petition for writ of certiorari to the Supreme Court of the United States. Although it is no longer necessary to prepare a formal record for submission with the petition, the rules do require that a copy of the opinion of our Court be attached to the petition. I submit that the *single* opinion of the Court covering *both* appeals imposes a prejudicial and unfair financial and legal burden upon my client. Local should not be required to publish any part of the opinion which is concerned only with the first trial of the case. As Justice Spiegel pointed out at page 247 of the opinion, Local did not raise the question of corporate responsibility to which a great part of it is devoted. Local, at most, was on the fringes of the alleged conspiracy. Its statement of facts will be entirely different from that of any other defendant who decides to seek relief in Washington.

* * *

... For the foregoing reasons, I earnestly request that the opinion of November 4, 1971, be rewritten into two opinions, each covering a separate trial. I do not suggest that every point in the second opinion be covered as fully as in the first opinion. My request is simply that the Court furnish Local with an opinion which is confined to the crime which Local is charged with having committed.

2. The opinion does not take cognizance of any of the facts set forth in the reply brief filed by Local. That document pointed out that the trial judge had granted a very extensive motion to strike evidence, which had been originally admitted against Local. The Commonwealth in its

brief, and Justice Spiegel in his opinion, cited much of this evidence as though it had never been stricken.

Again, this protest is not merely academic. As a matter of fact, it points up the fact that the opinion of the Court does not consider some of the evidentiary arguments made in behalf of Local. For example, on page 224 of the opinion, there is a copy of an exhibit listing contributions allegedly made by certain of the defendant corporations. Local attempted to make the point that the jury saw the original of this exhibit when it was first marked for identification. In that exhibit the blank space actually contained the letters "Loc". Heath, on the witness stand, identified this as meaning "Local". After Local's motion to strike was allowed by the Court, "Loc" was masked out of the exhibit. However, the damage had been done; the jury had seen the letters and had heard Heath testify concerning their meaning.

3. I submit that the statement of facts as it pertains to Local's participation is not completely fair or accurate. From the statement at page 212 of the opinion, the Supreme Court could infer that Sands corroborated Schwartz's testimony concerning McHenry's telephone call, when in fact all he corroborated was the delivery of the envelope. Further, the opinion on page 247-248 would indicate that McHenry, on behalf of Local, concurred with the payment by Schwartz of $2,000 to Hanley. The evidence is exactly the opposite, to wit, that Local declined to participate in any such payment to Hanley and that it withdrew from the agreement concerning the transfer of the offices. This particular evidence was elicited on cross-examination for the precise purpose of disproving the alleged arrangement which involved regular payments for three purposes, including the transfer of licenses.

4. The opinion considers the so-called "two conspiracy" argument of the defendants in the second trial. It

adopts the opinion of the trial judge to the effect that the jury could decide which, if either, of the two conspiracies occurred together with his admonition that if they found more one conspiracy all the defendants should be found not guilty (page 268). Local and one other defendant could have been involved in only one conspiracy, to wit, the one described by Schwartz concerning the rates. Many of the other defendants were identified as participating in both conspiracies. Thus, to this date, it is not clear which of the two conspiracies the jury found to have transpired, and Local is left in limbo.

5. The starting point for *all* the charges in the *second* trial is the meeting at Haskins and Sells in New Jersey. No representative of Local was present at this meeting, and the testimony concerning it was *never offered* against Local. The opinion does not refer to this fact and a higher court might have the impression the evidence was admitted against Local despite the complicated footnotes indicating the defendants against whom such evidence was admitted. In the cause of fairness alone, I suggest that the opinion of the Court reflect the fact that no representative of Local attended the initial meeting in New Jersey or any other meeting in connection with the alleged conspiracy. It is this indiscriminate grouping of Local in the same pool with all the other defendants that has prejudiced it from the day the indictments were returned in 1964.

6. Finally, the opinion points out, at page 30, that there was a substantive indictment for bribery against Local. In all fairness, the opinion ought to mention the fact that we received a directed verdict of acquittal on that indictment (No. 11,996).

Respectfully yours,
(s) LAWRENCE R. COHEN

## EXHIBIT D

SUPREME JUDICIAL COURT
BOSTON, 8, MASSACHUSETTS

R. AMMI CUTTER
ASSOCIATE JUSTICE

November 11, 1971

Lawrence R. Cohen, Esquire
19 Congress Street
Boston, Massachusetts
Dear Sir:

Your request in case No. 14,585, *Commonwealth* v. *Beneficial Finance Co. & others,* that the "decision be rewritten" has been denied by the court.

Prior to receipt of your letter, Appendix B of the opinion was slightly amended and a copy is enclosed for your information. We are adding to the appendix (under the heading "Second Trial" and opposite "Local Finance Corporation") the words "Directed Verdict, Not Guilty, Indictment 11996."

Sincerely yours,
(s) R. AMMI CUTTER